IN THE HIGH OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

MONDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SSEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.19678 of 2007

Between:

B. Agamaiah & Anr. … Petitioners

Versus

The Joint Collector, Nizamabad,
Nizamabad District & Ors. … Respondents

Counsel for the Petitioners : Sri Pottigari Sridhar Reddy

Counsel for the Respondents: Govt.Pleader for Civil Supplies

THE HONOURABLE SRI JUSTICE P. S. NARAYANA

WP.NO.19678 of 2007

O R D E R

1. Government Pleader for Civil Supplies takes notice on behalf of respondents.

2. Sri Potigari Sridhar Reddy, the learned counsel representing the petitioner had taken this court through the impugned order and would submit that on the strength of a vague and unsustainable report, the impugned order had been made. The learned counsel would also submit that even if the impugned order is carefully examined, which is imposing substantive punishment and without issuance of any show cause notice and without any further enquiry to make such an order is totally unsustainable. The counsel also placed strong reliance on the decision of this Court in **ALIVELAMMA V/s. REVENUE DIVISIONAL OFFICER, DHARMAVARAM, ANANTAPUR DISTRICT**[1].

3. Per Contra, the learned Government Pleader for Civil Supplies would contend that it is not true that the impugned order specifies temporary cancellation but the learned Govt.Pleader would contend that there is no temporary cancellation as such, it is only temporary suspension pending enquiry. The learned Govt.Pleader for Civil Supplies would contend that it is just a mistake on the part of the concerned officer to mentioned as temporary cancellation.

4. Heard the counsel on record.

5. The writ petition is filed for a writ of Certiorari calling for the records pertaining to the Proceedings in B1/859/2007 dated 13-8-2007 issued by the second respondent herein and to declare the same as illegal, arbitrary and in violation of the principles of natural justice and in violation of the provisions of the AP Scheduled Commodities Dealers (Licensing and Distribution) Order 1982 and to consequently set aside the Proceedings in B1/859/2007 dated 13-8-2007 issued by the second respondent herein and to pass such other suitable orders.

6. It is stated that the petitioners are the Fair Price Shop Dealers of Jangamaipally and Mathmal villages respective of Yellareddy Revenue Mandal of Nizamabad district. It is stated that the petitioners were appointed as Fair Price Shop Dealers vide Proceedings No.B1/220/2002 dated 01-2-2002 and B1/481/2004 dated 06-4-2004 respectively by the second respondent. Since from the date of appointment as Fair Price Shop Dealers, the petitioners are supplying commodities to the respective cardholders without any remark.

7. It is also stated that the present writ petition is filed questioning the Proceedings No.B1/859/2007 dated 13-8-2007 of the second respondent, whereby the second respondent had temporarily

cancelled the authorization/license of the Fair Price Shop belonging to the petitioners. A perusal of the said proceedings indicates that based on the report of the Tahsildar Yellareddy Mandal that one Sri Pashamiyan and Sri KV Abdullah have purchased 400 litres of Kerosene from the first petitioner's shop and 200 litres of Kerosene from second petitioner's shop, the authorization/license has been temporarily cancelled.

8. It is alleged that the report of the Tahsildar nor the statements of Pashamiyan and Abdullah were ever supplied to the petitioners. The petitioners were not issued with any prior notice nor show cause notice before the issuance of the impugned proceedings. It is stated that substantial punishment had been inflicted upon the petitioners by temporarily canceling their authorization. It is stated that no charge sheet or any show cause was not issued to the petitioners nor any opportunity of being heard was given to the petitioners before the cancellation of their authorization.

9. It is also further stated that there is gross violation of the principles of natural justice as substantial punishment had been inflicted on the petitioners without giving any opportunity to the petitioners. The impugned proceeding does not indicate as to how the petitioners are prima facie liable. The action of the second

respondent in temporarily canceling the license of the petitioners without any prior notice is contrary to the provisions of AP Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. It is stated that prior show cause notice seeking explanation from the petitioners was mandatory as per the provisions of the Act, in particularly, in the facts and circumstances of the present case.

10. It is stated that the Mandal Revenue Inspector had conducted panchanama and filed a report stating that the supplies register and the existing stock are matching with the entire stock supplied during the month to the petitioners. It is subsequently revealed that Sri Pashamiyan and Sri Abdulla being own brothers are operating their own lorries and are purchasing kerosene from white card holder and selling it to some third persons for mixing in petrol and diesel.

11. In view of the above circumstances, the petitioners approached this court praying the appropriate reliefs, which had been specified supra. The counsel also placed strong reliance on the decision of this Court in **ALIVELAMMA V/s. REVENUE DIVISIONAL OFFICER, DHARMAVARAM, ANANTAPUR DISTRICT** referred supra-1, wherein the learned Judge observed at para no.6 as hereunder:

> Clause 5 (4) of the Control Order is identical to Clause 3 (4) of AP Scheduled Commodities (Regulation or Distribution by Card system) Order 1973. Interpreting the same, this Court in B.Venkateswara Rao's case [reported in 1997 (1) An.WR-83] held that issuance of

> notice contemplated under that Clause is mandatory, before the authorisation of a fair price shop dealer is suspended. The question as to whether the suspension is resorted to, as a measure, pending enquiry, or as a substantive punishment, would depend on the text of the order passed in the relevant case. In the present case, the expressed used is that the petitioner is temporarily removed as fair price shop dealer. It partakes the character of almost a substantive punishment, though it is observed that the measure is resorted to, until further orders. Further, in the very District, the appointing authorities have been issuing notices contemplated under Clause 5 (4) of the Control Order, whereas in the present case, the suspension is ordered straight away.
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> For the foregoing reasons, the order of suspension passed against the petitioner is set aside. It is, however, left open to the respondent to issue notice and to proceed further either to suspend authorization or to cancel it.

12. It is not in serious controversy that there is a remedy by way of appeal to the appellate authority as against the impugned order. On a careful reading of the impugned order though the expression and the word used in the impugned order is not happily worded the substance of the order would go to show that it is only suspension pending enquiry and it is made clear that inasmuch as an order of suspension pending enquiry, which had been made, in view of the fact that the petitioners are having a remedy by way of appeal, liberty is given to the petitioners to prefer an appeal, if the petitioners are advised to do so. In the alternative, the second respondent also is hereby directed to complete the enquiry within a period of four weeks

from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is disposed of at the admission stage. No costs.

JUSTICE P . S. NARAYANA .

17 / 9 / 2007

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[1]) 2005 (1) ALD-19